

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE )  
COMMISSION, )  
Plaintiff, )  
 )  
 ) NO. 1:10-CV10172-DPW  
vs. )  
 )  
 )  
STATE STREET BANK AND TRUST )  
COMPANY, )  
 )  
Defendant. )

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK

SETTLEMENT CONFERENCE

John Joseph Moakley United States Courthouse  
Courtroom No. 1  
One Courthouse Way  
Boston, MA 02210  
Thursday, February 25, 2010  
10:00 a.m.

Brenda K. Hancock, RMR, CRR  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
One Courthouse Way  
Boston, MA 02210  
(617)439-3214

1 APPEARANCES:

2 UNITED STATES SECURITIES AND EXCHANGE COMMISSION

By: Deena R. Bernstein, Esq.

3 Robert B. Baker, Esq.

33 Arch Street, 23rd Floor

4 Boston, MA 02110

On behalf of the Plaintiff.

5 ROPES & GRAY

6 By: Robert G. Jones, Esq.

R. Daniel O'Connor, Esq.

7 One International Place

8 Boston, MA 02110

On behalf of the Defendant.

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1 (The following proceedings were held in open court  
2 before the Honorable Douglas P. Woodlock, United States  
3 District Judge, United States District Court, District of  
4 Massachusetts, at the John J. Moakley United States Courthouse,  
5 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on  
6 Tuesday, February 25, 2010):

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 10:00 a.m.)

9 THE CLERK: This Honorable Court is now in session.  
10 You may be seated.

11 Calling the case Civil Action 10-10172, Securities and  
12 Exchange Commission versus State Street Bank and Trust Company.

13 THE COURT: Well, I do have a couple of questions, and  
14 the largest rubric is where are the individual defendants?

15 MS. BERNSTEIN: Your Honor, the individuals actually  
16 aren't -- Oh, where are the individual defendants here.

17 In this particular case, the investigation is  
18 continuing as to the individuals. As we disclosed in a press  
19 release, until the very end of the investigation in this case  
20 State Street had been asserting privilege. As a part of its  
21 cooperation, it provided additional information, which included  
22 a limited waiver of privilege that provided us additional  
23 information that is enabling us to investigate the culpability  
24 of individuals. That investigation is continuing.

25 THE COURT: Now, the class of individuals who would be

1 the subject of the investigation would be signatories or  
2 drafters of the offering materials; is that it?

3 MS. BERNSTEIN: Well, in this case, because it wasn't  
4 a mutual fund, the offering materials -- there aren't, for  
5 example, a prospectus.

6 THE COURT: Right.

7 MS. BERNSTEIN: Primarily what we are looking at are  
8 information that was provided to investors. Sometimes they  
9 were Power Points or fact sheets. In addition, in the late  
10 period, in mid-2007, there were a series of letters, a July  
11 26th letter, an August 2nd letter, an August 14th letter, and  
12 we would be looking at the drafter, slash, signatories,  
13 reviewers of those letters.

14 THE COURT: And it is simply the marketing people as  
15 opposed to persons more senior than they?

16 MS. BERNSTEIN: It will depend where the investigation  
17 leads. The problem sometimes with marketing people, though, is  
18 that, though they may be making misrepresentations, they may  
19 not understand that, because they may not have the knowledge  
20 necessary. So, that is part of our investigation continuing  
21 forward.

22 THE COURT: I have not asked for but I think I do need  
23 to know whether any of the beneficiaries of this resolution are  
24 individuals who might be subjects of the investigation.

25 MS. BERNSTEIN: Not that I am aware of, your Honor,

1 because the State Street Pension Fund will not be taking from  
2 this settlement, so they are not.

3 THE COURT: No. I am asking whether they are  
4 beneficiaries, whether they are going to receive monies. Let's  
5 take Marketing Person A, who showed a Power Point containing  
6 misrepresentations. Is such a person in this list identified  
7 only by number?

8 MS. BERNSTEIN: No, your Honor. In fact, those 273  
9 investors are pension funds, employee benefit plans and  
10 charities.

11 THE COURT: There are no individuals involved?

12 MS. BERNSTEIN: There are no individual investors.  
13 Obviously, these pension funds benefit, and charities, benefit  
14 individuals.

15 THE COURT: Right.

16 MS. BERNSTEIN: There are pension plans for police  
17 officers, for example. But these are institutional investors  
18 because of the nature of these funds.

19 THE COURT: Now, why is it that you chose not to  
20 identify them?

21 MS. BERNSTEIN: To protect their confidentiality. We  
22 can provide you a copy.

23 THE COURT: What is the confidentiality? I guess I  
24 would like to understand why the pension funds who made  
25 improvident investments should be entitled to some form of

1 privacy rights, I guess is the closest that it comes to.

2 MS. BERNSTEIN: Well, for example, we recognize in the  
3 local rules every time I put something on ECF I have to click  
4 "Redactions."

5 THE COURT: Right.

6 MS. BERNSTEIN: We do recognize that people's  
7 investments, their numbers, their Social Security numbers on an  
8 individual basis --

9 THE COURT: But these are not Social Security numbers,  
10 as I understand it. The IDs of what I will call the  
11 beneficiaries of this settlement I have been told are not  
12 individuals but entities, and the question for me is why  
13 entities that are engaged in making investment choices should  
14 have improvident investment choices shielded from public view.  
15 We are not talking about their TIN; we are not talking about  
16 anything like that.

17 MS. BERNSTEIN: I think Mr. Jones, who is representing  
18 State Street, would like to address that.

19 THE COURT: All right.

20 MR. JONES: So, these are either clients presently or  
21 former clients of State Street Bank and Trust.

22 THE COURT: Right.

23 MR. JONES: They are not a part of this settlement  
24 because they have been charged with improvidently investing.  
25 That is a different question.

1           THE COURT: I understand that. The question for me is  
2 why the public records should not disclose who gets money, who  
3 gets, you know, on the first page a million-five. Well, no, I  
4 take that back, because that is an ERISA settlement, and, as  
5 you understand it, the ERISA settlement --

6           MR. JONES: The ERISA settlement was approved on the  
7 19th of February by Judge Holwell in the Southern District of  
8 New York.

9           THE COURT: Is that a preliminary approval or final  
10 approval?

11          MR. JONES: That's final approval.

12          THE COURT: And were the names of the entities who  
13 received the settlement amounts kept private?

14          MR. JONES: I don't believe that the amounts and the  
15 full list of class members was part of the final order, but we  
16 can confirm that for your Honor.

17          THE COURT: Well, let me go back to where I was  
18 before, which is, when I use "improvident," I mean people who  
19 have had entities who have made investments that turned out  
20 badly. I do not mean to suggest that they themselves were  
21 involved in some misconduct, but I do not know why their names  
22 should be kept private.

23          MR. JONES: If I could, your Honor, in an  
24 analogous-type of a case, let's say you have a mutual fund.  
25 You might have tens of thousands of investors in that mutual

1 fund, and we wouldn't normally expect to have listed out in a  
2 settlement document the tens of thousands of shareholders who  
3 are going to receive a payment in many of the market-timing  
4 cases, for example, in 2003. It is just not feasible here.  
5 These plans are essentially analogous to those investors, but  
6 it just happens that the number's smaller.

7 THE COURT: They are, but there are two differences  
8 here. First, this is a sovereign engaged in making a  
9 settlement on behalf of entities, and transparency, it seems to  
10 me, suggests that who is a beneficiary is important.

11 There is a second dimension. The second dimension is  
12 the ultimate beneficiaries, that is, those who are in these  
13 pension plans, or whatever the entities are, have a right, I  
14 would think, or at least should have available on the public  
15 record that their entity made this investment, and they could  
16 make their own choices about what that means about the degree  
17 of diligence that was exercised by the entity that had losses  
18 of \$4 million, \$3 million, that sort of thing. I just do not  
19 understand what the justification is, except embarrassment, for  
20 keeping these entities from being identified.

21 MS. BERNSTEIN: Your Honor, let me first clarify we  
22 are not settling on behalf of these investors. For example,  
23 where they are allowed on their own to seek additional monies,  
24 there is no operative release in these documents.

25 THE COURT: You got money for them. You got money for



1     them because they made an investment that turned out badly and  
2     turned out badly because there was misconduct, although not  
3     admitted, misconduct by State Street and individuals at State  
4     Street, whether or not they will ever become the subject of an  
5     investigation.

6             My question, really, goes to questions of  
7     transparency. Turning back to the kind of lengthy lists in  
8     class-action cases, I do not know but that I would not think in  
9     the future about doing precisely that, except for individuals.  
10    Individuals are a little bit different.

11            MS. BERNSTEIN: I can say, as a Commission policy,  
12    even when we draft complaints, that we try not to put  
13    investors' names into those complaints to protect their privacy  
14    rights.

15            Your Honor may be correct that in this case there are  
16    other policy reasons that suggest a vetting, and we do have,  
17    and it was contemplated in the settlement papers, a list of  
18    those investors with the names for your review, if you would  
19    like.

20            THE COURT: I had this observation, that is why I am  
21    raising it, that with respect to individual investors, I think  
22    there are different kinds of considerations that are at play,  
23    but in connection with what I will call "representative  
24    investors," pension funds or whatever the purposes are of these  
25    other entities, entity investors, I do not know that there is

1 justification, and it would seem to me that it would be  
2 appropriate to include it in the public record.

3 Now, how, having raised this, it properly should be  
4 resolved is another matter. That is a procedural matter. But  
5 I raise it because that is a matter of concern to me for  
6 transparency purposes.

7 MR. JONES: And I appreciate that statement, your  
8 Honor. May I add one thing?

9 THE COURT: Sure.

10 MR. JONES: That, before the Court issues a final  
11 ruling on that question, I would appreciate the opportunity for  
12 State Street Bank and Trust to submit -- because one other  
13 difference here is that this is a bank with a different  
14 regulatory overlay, different privacy obligations, especially  
15 now since 2001.

16 THE COURT: Right.

17 MR. JONES: And I'm not sure that sitting at this  
18 table this morning we are ready to vet all of those issues in a  
19 way --

20 THE COURT: No; I understand that. That is why I  
21 raised it in this fashion, with an understanding that you  
22 should have whatever time is necessary, reasonable time is  
23 necessary, to think through this, and the beneficiaries may  
24 well want to do that.

25 But, just by way of background, I have been faced

1 recently with a series of cases in which two things occur:  
2 One, misconduct is apparently conducted without human hands.  
3 The defendants are entities. Baron Thurlow used to say one of  
4 the problems with sentencing corporations is they have "no soul  
5 to damn, no body to kick." They somehow have problems, from my  
6 perspective, of capturing adequately culpability, but sovereign  
7 prosecutors have the right to choose whoever they want. I am  
8 simply raising that.

9 Now, having raised that, victims are also claiming  
10 that they should not be identified, corporate-entity victims  
11 are claiming that they should not be identified. I have a case  
12 pending before me now that I have been thinking about a little  
13 bit, a criminal case, in which victims are corporations that  
14 were hacked into and had credit card information taken from  
15 them. Two of them apparently did not -- the efforts to hack in  
16 were not successful in taking credit cards, and they claim  
17 privacy rights.

18 While recognizing the Supreme Court, apparently, has a  
19 very robust view of the anthropomorphizing of corporations, if  
20 recent cases are any indication, I do not know that they have  
21 any privacy rights. They may have First Amendment rights, but  
22 they do not, at least, have privacy rights that I am aware of  
23 that are fulsome.

24 So, in the interest of pursuing it, I think I would  
25 like to pursue it on this, unless there is some good reason

1 that you want to press on me to get me to sign this today. My  
2 general overall view is it is a fair, reasonable and adequate  
3 settlement, but with the reservation that, generally,  
4 corporations act through human beings, and those human beings  
5 are subject to Section 17 just as much as corporations are or  
6 banking institutions.

7 But my view, I think, would be that a proper  
8 documentation of the settlement would include the identities of  
9 any entities. You tell me it is all entities; there is not an  
10 individual involved in the list; is that it?

11 MS. BERNSTEIN: That is correct, your Honor.

12 THE COURT: So, what do you want to do?

13 MS. BERNSTEIN: I think the objections in terms of  
14 exposing individuals may be more on the --

15 THE COURT: Entities.

16 MS. BERNSTEIN: Excuse me, the entities, would be more  
17 on the State Street side, because they have an overlay because  
18 it is a bank. Their regulator for most purposes is the banking  
19 regulators, not the Securities and Exchange Commission, and,  
20 so, they have to look at the overlay of banking regulations and  
21 privacy issues that they may owe to their clients as part of  
22 the settlement, and they may need to address that. So, I will  
23 defer on those issues to State Street.

24 I am happy to give you a copy today so you understand  
25 who the investors who are victimized were.

1           THE COURT: And I will receive it under seal until we  
2 have got this aspect of it resolved.

3           MR. JONES: And I take it, your Honor, that -- I mean,  
4 really, there are a couple of different ways to do this. One  
5 would be for you to sign the order today and then for us to  
6 brief in a supplemental way the question of whether to add a  
7 revised Attachment A with names. The other, of course, would  
8 be to wait a short period of days.

9           THE COURT: Right.

10          MR. JONES: And, as I say, caution causes me to not  
11 want to just today decide that we're going to disclose these  
12 names.

13          THE COURT: Well, let me ask you this, because I want  
14 people who have entitlements to the benefits of the settlement  
15 to have it promptly; I do not want to have it hang out there:

16               Is there any reason why I should not sign it with the  
17 knowledge that, in signing this, I may at a later date say that  
18 the identities of the investing entities will be made public  
19 too, not making a determination about that at this point?

20          MR. JONES: At this point. But if you were to sign  
21 today, would that be sufficient from the defendant's  
22 standpoint?

23          THE COURT: Yes.

24          MR. JONES: I think the answer is yes.

25          MS. BERNSTEIN: And it would be for us as well, your

1 Honor.

2 THE COURT: All right. So, I think what I will do,  
3 then, is ask whether or not any party, any person in the  
4 courtroom has any objections to my entering the settlement  
5 agreement here, formally identified as the Proposed Consent and  
6 Final Judgment, which is part of Document No. 2, the Consent  
7 and Final Judgment here.

8 Does any person wish to be heard with respect to it?

9 (No response)

10 THE COURT: And, hearing none, I have indicated my  
11 view that it is a fair, reasonable and adequate settlement  
12 under the premises, with the reservation that there are other  
13 defendants who necessarily must be involved in this, and I  
14 anticipate that the Commission will continue its investigation  
15 to determine whether or not it is appropriate to bring actions  
16 against them as well.

17 Now, second, I will receive under seal the list of the  
18 investing entities who are to receive the benefits of this  
19 settlement.

20 Third, how much time do you think you need?

21 MR. JONES: Oh, I would think 10 days, your Honor,  
22 would make sense.

23 THE COURT: All right. So, let us make it March 12th,  
24 which is a little over two weeks. Now, with respect to the  
25 investing entities, is there a way to communicate with them --

1 they are going to get a check, so I presume you know where they  
2 are -- that would make them aware in a timely fashion that I am  
3 considering the question of whether or not to disclose their  
4 names? That is independent of your concerns with the banking  
5 regulatory entities or ongoing client relationships. I just  
6 want to be sure that the individual investing entities receive  
7 notice that the Court is considering whether or not to include  
8 on the public record the names of the entities.

9 MS. BERNSTEIN: Your Honor, I would defer to State  
10 Street, but, as part of the Consent, they have already  
11 communicated once with investors two days after we filed  
12 papers, within two business days. They've already sent them  
13 one communication. I presume they can send them another  
14 communication.

15 MR. JONES: We could send a blanket communication, or  
16 we do have several of the clients on the list who are already  
17 represented by counsel who have either been involved with  
18 litigation that has settled or has not settled. So, we do have  
19 a proxy group out there. I will take your Honor's direction.

20 THE COURT: I will leave it to you to formulate the  
21 particulars of notice, but I want each of the entities that  
22 will receive the benefit of this individually to be notified,  
23 and that probably comes with a check, although maybe it does  
24 not; in any event, a check in the sense that they are getting  
25 paid out.

1 MR. JONES: Sure.

2 THE COURT: But you handle the question of notice  
3 simply that you have been directed to notify each of the  
4 investing entities that the Court is considering the question  
5 of whether or not to disclose the names of the investing  
6 entities, and they may file an objection by March 12th.

7 MR. JONES: By March 12th. Okay.

8 THE COURT: All right?

9 MR. JONES: Fine. Thank you.

10 THE COURT: Anything else that we need to take up?  
11 So, I am simply going to deal with this in a most -- maybe I  
12 will not -- I think maybe if the Commissioner, or whoever has  
13 the word processing, has the final version of this, can give me  
14 a clean one that does not say "Proposed Order" on it, that is  
15 the easiest thing. If you can get it over today, I will enter  
16 it today.

17 MS. BERNSTEIN: Terrific.

18 THE COURT: All right. Thank you much. We will be in  
19 recess.

20 THE CLERK: All rise.

21 (The Honorable Court exited the courtroom at 10:25 a.m.)

22 (WHEREUPON, the proceedings adjourned at 10:25 a.m.)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Securities and Exchange Commission v. State Street Bank, No. 1:10-cv-10172-DPW.

Date: March 5, 2010

/s/ Brenda K. Hancock

Brenda K. Hancock, RMR, CRR

Official Court Reporter